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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-90

11 **KAY OSWALD MCCONNELL**
12 **301 Demonbreun Street, #1006**
13 **Nashville, TN 37201**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Registered Nurse License No. 501447**
15 **Nurse Anesthetist Certificate No. 2094**

16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about August 7, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs, filed Accusation No. 2013-90 against Kay Oswald McConnell (Respondent)
22 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

23 2. On or about May 26, 1994, the Board of Registered Nursing (Board) issued
24 Registered Nurse License No. 501447 to Respondent. The Registered Nurse License was in full
25 force and effect at all times relevant to the charges brought in Accusation No. 2013-90 and will
26 expire on July 31, 2013, unless renewed.

27 3. On or about June 7, 1994, the Board of Registered Nursing issued Nurse Anesthetist
28 Certificate No. 2094 to Respondent. The Nurse Anesthetist Certificate was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 2013-90 and will expire on
2 July 31, 2013, unless renewed.

3 4. On or about August 7, 2012, Respondent was served by Certified Mail and United
4 States First Class mail with copies of the Accusation No. 2013-90, Statement to Respondent,
5 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
6 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to California
7 Code of Regulations, title 16, section 1409.1, is required to be reported and maintained with the
8 Board. Respondent's address of record was and is: 301 Demonbreun Street, #1006, Nashville, TN
9 37201.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 6. On or about September 5, 2012, the United States Postal Service returned to the
14 Board the certified mail to Respondent stamped "unclaimed". The first class mailing to
15 Respondent described in Paragraph 4 has not been returned by the United States Postal Service.

16 7. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
20 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
21 may nevertheless grant a hearing.

22 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2013-
24 90.

25 9. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions
28 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

10 Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
2 as well as taking official notice of all the investigatory reports, exhibits and statements contained
3 therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-
4 90, finds that the charges and allegations in Accusation No. 2013-90, are separately and severally,
5 found to be true and correct by clear and convincing evidence.

6 11. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$ 1,232.50 as of September 13, 2012.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Kay Oswald McConnell has
11 subjected her Registered Nurse License No. 501447 and her Nurse Anesthetist Certificate No.
12 2094 to discipline.

13 2. The agency has jurisdiction to adjudicate this case by default.

14 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
15 Nurse License and her Nurse Anesthetist Certificate based upon the violations described below as
16 alleged in the Accusation, which are supported by the evidence contained in the Default Decision
17 Investigatory Evidence Packet in this case.

18 Respondent violated Business & Professions Code sections 2761(f) and 2762(c) by her
19 2007 conviction for violating Kentucky Revised Statutes section 189A.010 (driving under the
20 influence of alcohol). Respondent also violated Business & Professions Code section 2762(b) by
21 her use of alcohol to an extent or in a manner dangerous or injurious to herself or others.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED December 44, 2012

Attachment:
Exhibit A: Accusation.

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
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6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2013-90

13 **KAY OSWALD MCCONNELL**
301 Demonbreun Street, #1006
Nashville, TN 37201

A C C U S A T I O N

14 **Registered Nurse License No. 501447**
15 **Nurse Anesthetist Certificate No. 2094**

16 Respondent.

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18 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Executive
21 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

22 2. On or about May 26, 1994, the Board issued Registered Nurse License Number
23 501447 to Kay Oswald McConnell ("Respondent"). The license was in full force and effect at all
24 times relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

25 3. On or about June 7, 1994, the Board issued Nurse Anesthetist Certificate Number
26 2094 to Respondent. The license was in full force and effect at all times relevant to the charges
27 brought herein and will expire on July 31, 2013, unless renewed.

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1 **COST RECOVERY**

2 8. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of a Crime)**

8 9. Respondent is subject to discipline under Code section 2761(f), in that on or about
9 January 25, 2007, in the case of *Commonwealth of Kentucky v. Kay McConnell*, (Commonwealth
10 of Kentucky, 28th Judicial District, Pulaski District Court, Case No. 05-T-5283), Respondent was
11 convicted by the Court on her plea of guilty of violating KRS section 189A.010 (operating a
12 motor vehicle with a blood alcohol level of .08% or higher), a crime that is substantially related to
13 the qualifications, functions or duties of a licensed registered nurse. The circumstances of the
14 crime were that on or about December 8, 2005, Respondent drove a vehicle while having a blood
15 alcohol level of 0.20%, and was involved in a collision. After striking the other vehicle,
16 Respondent fled the scene of the accident but was immediately caught.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 10. Respondent is subject to discipline under Code sections 2761(a), on the grounds of
20 unprofessional conduct, as defined in Code section 2762(b), in that on or about
21 December 8, 2005, Respondent used an alcoholic beverage to an extent or in a manner dangerous
22 or injurious to herself and the public when she operated a vehicle with a blood alcohol level of
23 0.20%, as more particularly set forth above in paragraph 9.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Conviction Involving the Consumption of Controlled Substances and Alcohol)**

26 11. Respondent is subject to discipline under Code section 2761(a), on the grounds of
27 unprofessional conduct as defined in Code section 2762(c), in that on or about January 25, 2007,

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1 Respondent was convicted of a crime involving the consumption of alcohol, as more
2 particularly set forth above in paragraph 9.

3 **PRAYER**

4 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 501447, issued to Kay
7 Oswald McConnell;

8 2. Revoking or suspending Nurse Anesthetist Certificate Number 2094, issued to Kay
9 Oswald McConnell;

10 3. Ordering Kay Oswald McConnell to pay the Board of Registered Nursing the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3; and,

13 4. Taking such other and further action as deemed necessary and proper.

14 DATED:

August 7, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant